

such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such tax knew, or exercising reasonable diligence would have known, that such failure existed, and

(ii) in the case of a church plan (as so defined), such failure is corrected before the close of the correction period (determined under the rules of section 414(e)(4)(C)).

**(3) Overall limitation for unintentional failures**

In the case of failures which are due to reasonable cause and not to willful neglect—

**(A) Single employer plans**

**(i) In general**

In the case of failures with respect to plans other than specified multiple employer health plans, the tax imposed by subsection (a) for failures during the taxable year of the employer shall not exceed the amount equal to the lesser of—

(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans, or

(II) \$500,000.

**(ii) Taxable years in the case of certain controlled groups**

For purposes of this subparagraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

**(B) Specified multiple employer health plans**

**(i) In general**

In the case of failures with respect to a specified multiple employer health plan, the tax imposed by subsection (a) for failures during the taxable year of the trust forming part of such plan shall not exceed the amount equal to the lesser of—

(I) 10 percent of the amount paid or incurred by such trust during such taxable year to provide medical care (as defined in section 9832(d)(3)) directly or through insurance, reimbursement, or otherwise, or

(II) \$500,000.

For purposes of the preceding sentence, all plans of which the same trust forms a part shall be treated as one plan.

**(ii) Special rule for employers required to pay tax**

If an employer is assessed a tax imposed by subsection (a) by reason of a failure with respect to a specified multiple employer health plan, the limit shall be determined under subparagraph (A) (and not under this subparagraph) and as if such plan were not a specified multiple employer health plan.

**(4) Waiver by Secretary**

In the case of a failure which is due to reasonable cause and not to willful neglect, the

Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

**(d) Tax not to apply to certain insured small employer plans**

**(1) In general**

In the case of a group health plan of a small employer which provides health insurance coverage solely through a contract with a health insurance issuer, no tax shall be imposed by this section on the employer on any failure (other than a failure attributable to section 9811) which is solely because of the health insurance coverage offered by such issuer.

**(2) Small employer**

**(A) In general**

For purposes of paragraph (1), the term “small employer” means, with respect to a calendar year and a plan year, an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year. For purposes of the preceding sentence, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as one employer.

**(B) Employers not in existence in preceding year**

In the case of an employer which was not in existence throughout the preceding calendar year, the determination of whether such employer is a small employer shall be based on the average number of employees that it is reasonably expected such employer will employ on business days in the current calendar year.

**(C) Predecessors**

Any reference in this paragraph to an employer shall include a reference to any predecessor of such employer.

**(3) Health insurance coverage; health insurance issuer**

For purposes of paragraph (1), the terms “health insurance coverage” and “health insurance issuer” have the respective meanings given such terms by section 9832.

**(e) Liability for tax**

The following shall be liable for the tax imposed by subsection (a) on a failure:

(1) Except as otherwise provided in this subsection, the employer.

(2) In the case of a multiemployer plan, the plan.

(3) In the case of a failure under section 9803 (relating to guaranteed renewability) with respect to a plan described in subsection (f)(2)(B), the plan.

**(f) Definitions**

For purposes of this section—

**(1) Group health plan**

The term “group health plan” has the meaning given such term by section 9832(a).

**(2) Specified multiple employer health plan**

The term “specified multiple employer health plan” means a group health plan which is—

- (A) any multiemployer plan, or
- (B) any multiple employer welfare arrangement (as defined in section 3(40) of the Employee Retirement Income Security Act of 1974, as in effect on the date of the enactment of this section).

**(3) Correction**

A failure of a group health plan shall be treated as corrected if—

- (A) such failure is retroactively undone to the extent possible, and
- (B) the person to whom the failure relates is placed in a financial position which is as good as such person would have been in had such failure not occurred.

(Added Pub. L. 104-191, title IV, § 402(a), Aug. 21, 1996, 110 Stat. 2084; amended Pub. L. 105-34, title XV, § 1531(b)(2), Aug. 5, 1997, 111 Stat. 1085.)

## REFERENCES IN TEXT

Section 3(40) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(2)(B), is classified to section 1002(40) of Title 29, Labor.

The date of the enactment of this section, referred to in subsec. (f)(2)(B), is the date of enactment of Pub. L. 104-191, which was approved Aug. 21, 1996.

## AMENDMENTS

1997—Subsec. (a). Pub. L. 105-34, § 1531(b)(2)(A), substituted “plans” for “plan portability, access, and renewability”.

Subsec. (c)(3)(B)(i)(I). Pub. L. 105-34, § 1531(b)(2)(B), substituted “9832(d)(3)” for “9805(d)(3)”.

Subsec. (d)(1). Pub. L. 105-34, § 1531(b)(2)(C), inserted “(other than a failure attributable to section 9811)” after “on any failure”.

Subsec. (d)(3). Pub. L. 105-34, § 1531(b)(2)(D), substituted “section 9832” for “section 9805”.

Subsec. (f)(1). Pub. L. 105-34, § 1531(b)(2)(E), substituted “section 9832(a)” for “section 9805(a)”.

## EFFECTIVE DATE OF 1997 AMENDMENT

Section 1531(c) of Pub. L. 105-34 provided that: “The amendments made by this section [enacting sections 9811 and 9812 of this title, amending this section and sections 9801 and 9831 of this title, and renumbering sections 9804 to 9806 of this title as sections 9831 to 9833 of this title] shall apply with respect to group health plans for plan years beginning on or after January 1, 1998.”

## EFFECTIVE DATE

Section 402(c) of Pub. L. 104-191 provided that: “The amendments made by this section [enacting this section] shall apply to failures under chapter 100 of the Internal Revenue Code of 1986 (as added by section 401 of this Act).”

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9812 of this title.

**§ 4980E. Failure of employer to make comparable medical savings account contributions****(a) General rule**

In the case of an employer who makes a contribution to the medical savings account of any employee with respect to coverage under a high deductible health plan of the employer during a

calendar year, there is hereby imposed a tax on the failure of such employer to meet the requirements of subsection (d) for such calendar year.

**(b) Amount of tax**

The amount of the tax imposed by subsection (a) on any failure for any calendar year is the amount equal to 35 percent of the aggregate amount contributed by the employer to medical savings accounts of employees for taxable years of such employees ending with or within such calendar year.

**(c) Waiver by Secretary**

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

**(d) Employer required to make comparable MSA contributions for all participating employees****(1) In general**

An employer meets the requirements of this subsection for any calendar year if the employer makes available comparable contributions to the medical savings accounts of all comparable participating employees for each coverage period during such calendar year.

**(2) Comparable contributions****(A) In general**

For purposes of paragraph (1), the term “comparable contributions” means contributions—

- (i) which are the same amount, or
- (ii) which are the same percentage of the annual deductible limit under the high deductible health plan covering the employees.

**(B) Part-year employees**

In the case of an employee who is employed by the employer for only a portion of the calendar year, a contribution to the medical savings account of such employee shall be treated as comparable if it is an amount which bears the same ratio to the comparable amount (determined without regard to this subparagraph) as such portion bears to the entire calendar year.

**(3) Comparable participating employees**

For purposes of paragraph (1), the term “comparable participating employees” means all employees—

- (A) who are eligible individuals covered under any high deductible health plan of the employer, and
- (B) who have the same category of coverage.

For purposes of subparagraph (B), the categories of coverage are self-only and family coverage.

**(4) Part-time employees****(A) In general**

Paragraph (3) shall be applied separately with respect to part-time employees and other employees.

**(B) Part-time employee**

For purposes of subparagraph (A), the term “part-time employee” means any employee who is customarily employed for fewer than 30 hours per week.

**(e) Controlled groups**

For purposes of this section, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 employer.

**(f) Definitions**

Terms used in this section which are also used in section 220 have the respective meanings given such terms in section 220.

(Added Pub. L. 104-191, title III, §301(c)(4)(A), Aug. 21, 1996, 110 Stat. 2049.)

**EFFECTIVE DATE**

Section applicable to taxable years beginning after Dec. 31, 1996, see section 301(j) of Pub. L. 104-191, set out as an Effective Date of 1996 Amendment note under section 62 of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 106 of this title.

**CHAPTER 44—QUALIFIED INVESTMENT ENTITIES**

Sec.	
4981.	Excise tax on undistributed income of real estate investment trusts.
4982.	Excise tax on undistributed income of regulated investment companies.

**AMENDMENTS**

1986—Pub. L. 99-514, title VI, §651(c), Oct. 22, 1986, 100 Stat. 2297, substituted: “QUALIFIED INVESTMENT ENTITIES” for “REAL ESTATE INVESTMENT TRUSTS” as chapter heading, substituted “Excise tax on undistributed income of real estate investment trusts” for “Excise tax based on certain real estate investment trust taxable income not distributed during the taxable year” in item 4981, and added item 4982.

1976—Pub. L. 94-455, title XVI, §1605(a), Oct. 4, 1976, 90 Stat. 1754, added chapter heading and section analysis.

**CHAPTER REFERRED TO IN OTHER SECTIONS**

This chapter is referred to in sections 275, 6103, 6161, 6211, 6212, 6213, 6214, 6405, 6501, 6512, 6862, 6871, 7422 of this title.

**§ 4981. Excise tax on undistributed income of real estate investment trusts****(a) Imposition of tax**

There is hereby imposed a tax on every real estate investment trust for each calendar year equal to 4 percent of the excess (if any) of—

- (1) the required distribution for such calendar year, over
- (2) the distributed amount for such calendar year.

**(b) Required distribution**

For purposes of this section—

**(1) In general**

The term “required distribution” means, with respect to any calendar year, the sum of—

- (A) 85 percent of the real estate investment trust’s ordinary income for such calendar year, plus

- (B) 95 percent of the real estate investment trust’s capital gain net income for such calendar year.

**(2) Increase by prior year shortfall**

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

- (A) the grossed up required distribution for the preceding calendar year, over
- (B) the distributed amount for such preceding calendar year.

**(3) Grossed up required distribution**

The grossed up required distribution for any calendar year is the required distribution for such year determined—

- (A) with the application of paragraph (2) to such taxable year, and
- (B) by substituting “100 percent” for each percentage set forth in paragraph (1).

**(c) Distributed amount**

For purposes of this section—

**(1) In general**

The term “distributed amount” means, with respect to any calendar year, the sum of—

- (A) the deduction for dividends paid (as defined in section 561) during such calendar year (but computed without regard to that portion of such deduction which is attributable to the amount excluded under section 857(b)(2)(D)), and
- (B) any amount on which tax is imposed under subsection (b)(1) or (b)(3)(A) of section 857 for any taxable year ending in such calendar year.

**(2) Increase by prior year overdistribution**

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

- (A) the distributed amount for the preceding calendar year (determined with the application of this paragraph to such preceding calendar year), over
- (B) the grossed up required distribution for such preceding calendar year.

**(3) Determination of dividends paid**

The amount of the dividends paid during any calendar year shall be determined without regard to the provisions of section 858.

**(d) Time for payment of tax**

The tax imposed by this section for any calendar year shall be paid on or before March 15 of the following calendar year.

**(e) Definitions and special rules**

For purposes of this section—

**(1) Ordinary income**

The term “ordinary income” means the real estate investment trust taxable income (as defined in section 857(b)(2)) determined—

- (A) without regard to subparagraph (B) of section 857(b)(2),
- (B) by not taking into account any gain or loss from the sale or exchange of a capital asset, and
- (C) by treating the calendar year as the trust’s taxable year.

**(2) Capital gain net income****(A) In general**

The term “capital gain net income” has the meaning given such term by section 1222(9) (determined by treating the calendar year as the trust’s taxable year).

**(B) Reduction for net ordinary loss**

The amount determined under subparagraph (A) shall be reduced by the amount of the trust’s net ordinary loss for the taxable year.

**(C) Net ordinary loss**

For purposes of this paragraph, the net ordinary loss for the calendar year is the amount which would be net operating loss of the trust for the calendar year if the amount of such loss were determined in the same manner as ordinary income is determined under paragraph (1).

**(3) Treatment of deficiency distributions**

In the case of any deficiency dividend (as defined in section 860(f))—

(A) such dividend shall be taken into account when paid without regard to section 860, and

(B) any income giving rise to the adjustment shall be treated as arising when the dividend is paid.

(Added Pub. L. 94-455, title XVI, §1605(a), Oct. 4, 1976, 90 Stat. 1754; amended Pub. L. 99-514, title VI, §668(a), Oct. 22, 1986, 100 Stat. 2306; Pub. L. 100-647, title I, §1006(s)(1), (3), Nov. 10, 1988, 102 Stat. 3418.)

**AMENDMENTS**

1988—Subsec. (c)(1)(A). Pub. L. 100-647, §1006(s)(3), inserted “(but computed without regard to that portion of such deduction which is attributable to the amount excluded under section 857(b)(2)(D))” after “such calendar year”.

Subsec. (e)(2). Pub. L. 100-647, §1006(s)(1), amended par. (2) generally, designating existing provisions as subpar. (A) and adding subpars. (B) and (C).

1986—Pub. L. 99-514 substituted “Excise tax on undistributed income of real estate investment trusts” for “Excise tax based on certain real estate investment trust taxable income not distributed during the taxable year” as section catchline and amended text generally. Prior to amendment text read as follows: “Effective with respect to taxable years beginning after December 31, 1979, there is hereby imposed on each real estate investment trust for the taxable year a tax equal to 3 percent of the amount (if any) by which 75 percent of the real estate investment trust taxable income (as defined in section 857(b)(2), but determined without regard to section 857(b)(2)(B), and by excluding any net capital gain for the taxable year) exceeds the amount of the dividends paid deduction (as defined in section 561, but computed without regard to capital gains dividends as defined in section 857(b)(3)(C) and without regard to any dividend paid after the close of the taxable year) for the taxable year. For purposes of the preceding sentence, the determination of the real estate investment trust taxable income shall be made by taking into account only the amount and character of the items of income and deduction as reported by such trust in its return for the taxable year.”

**EFFECTIVE DATE OF 1988 AMENDMENT**

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which

such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99-514 applicable to calendar years beginning after Dec. 31, 1986, see section 669(b) of Pub. L. 99-514, set out as a note under section 856 of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 857 of this title.

**§ 4982. Excise tax on undistributed income of regulated investment companies****(a) Imposition of tax**

There is hereby imposed a tax on every regulated investment company for each calendar year equal to 4 percent of the excess (if any) of—

(1) the required distribution for such calendar year, over

(2) the distributed amount for such calendar year.

**(b) Required distribution**

For purposes of this section—

**(1) In general**

The term “required distribution” means, with respect to any calendar year, the sum of—

(A) 98 percent of the regulated investment company’s ordinary income for such calendar year, plus

(B) 98 percent of the regulated investment company’s capital gain net income for the 1-year period ending on October 31 of such calendar year.

**(2) Increase by prior year shortfall**

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—

(A) the grossed up required distribution for the preceding calendar year, over

(B) the distributed amount for such preceding calendar year.

**(3) Grossed up required distribution**

The grossed up required distribution for any calendar year is the required distribution for such year determined—

(A) with the application of paragraph (2) to such taxable year, and

(B) by substituting “100 percent” for each percentage set forth in paragraph (1).

**(c) Distributed amount**

For purposes of this section—

**(1) In general**

The term “distributed amount” means, with respect to any calendar year, the sum of—

(A) the deduction for dividends paid (as defined in section 561) during such calendar year, and

(B) any amount on which tax is imposed under subsection (b)(1) or (b)(3)(A) of section 852 for any taxable year ending in such calendar year.

**(2) Increase by prior year overdistribution**

The amount determined under paragraph (1) for any calendar year shall be increased by the excess (if any) of—